

House were added to the resolution as signers thereof.

The resolution was then adopted unanimously.

#### MESSAGE FROM THE SENATE.

Senate Chamber,  
Austin, Texas, November 4, 1932.

Hon. Fred H. Minor, Speaker of the House of Representatives.

Sir: I am directed by the Senate to inform the House that the Senate has adopted

S. C. R. No. 1, Inviting Hon. John Nance Garner to address the joint session of the Legislature.

Respectfully,  
**BOB BARKER,**  
Secretary of the Senate.

#### ADJOURNMENT.

On motion of Mr. Hardy, the House, at 11 o'clock a. m., adjourned until 10 o'clock a. m. tomorrow.

#### APPENDIX.

#### STANDING COMMITTEE REPORTS.

The following committees have filed favorable reports on bills, as follows:

Appropriations: House bill No. 1.  
State Affairs: House bill No. 2.

#### THIRD DAY.

(Saturday, November 5, 1932.)

The House met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Speaker Minor.

The roll was called, and the following members were present:

Mr. Speaker.	Boyd.
Adams of Harris.	Bradley.
Adams of Jasper.	Brice.
Adamson.	Bryant.
Adkins.	Burns of Walker.
Akin.	Burns
Albritton.	of McCulloch.
Alsup.	Carpenter.
Anderson.	Caven.
Barron.	Coltrin.
Beck.	Coombes.
Bedford.	Cox of Lamar.
Bond.	Cox of Limestone.
Bounds.	Cunningham.

Dale.	McDougald.
Daniel.	McGill.
Donnell.	McGregor.
Dowell.	Magee.
Elliott.	Metcalf.
Engelhard.	Moffett.
Farmer.	Moore.
Farrar.	Morse.
Finn.	Murphy.
Fisher.	Nicholson.
Forbes.	O'Quinn.
Ford.	Patterson.
Fuchs.	Pope.
Giles.	Ramsey.
Goodman.	Ray.
Graves.	Reader.
Hanson.	Richardson.
Hardy.	Rogers.
Harrison	Rountree.
of El Paso.	Sanders.
Harrison	Satterwhite.
of Waller.	Savage.
Hefley.	Scott.
Herzik.	Shelton.
Hines.	Sherrill.
Holder.	Smith of Bastrop.
Holland.	Smith of Wood.
Holloway.	Sparkman.
Hoskins.	Stephens.
Howsley.	Stevenson.
Hughes.	Steward.
Jackson.	Strong.
Johnson	Tarwater.
of Dallam.	Terrell
Johnson	of Cherokee.
of Dimmit.	Towery.
Jones of Shelby.	Turner.
Jones of Atascosa.	Van Zandt.
Justiss.	Vaughan.
Keller.	Wagstaff.
Laird.	Walker.
Lasseter.	Warwick.
Lemens.	Weinert.
Leonard.	West of Coryell.
Lilley.	West of Cameron.
Long.	Wiggs.
McCombs.	Young.

#### Absent.

Baker.	Martin.
Brooks.	Mathis.
Claunch.	Munson.
Dodd.	Olsen.
Dunlap.	Petsch.
Dwyer.	Ratliff.
Greathouse.	Westbrook.
Kayton.	Wyatt.
Lockhart.	

#### Absent—Excused.

Davis.	Kennedy.
Duvall.	Lee.
Ferguson.	Mehl.
Grogan.	Sullivan.
Harman.	Terrell
Hill.	of Val Verde.
Hubbard.	

A quorum was announced present.  
Prayer was offered by the Rev. Jno. W. Holt, Chaplain.

#### LEAVES OF ABSENCE GRANTED.

The following members were granted leaves of absence on account of important business:

Mr. Duvall for today, on motion of Mr. Patterson.

Mr. Harman for today, on motion of Mr. Ford.

Mr. Grogan for today, on motion of Mr. Lilley.

Mr. Terrell of Cherokee for last Thursday and Friday, on motion of Mr. Fisher.

Mr. Mehl for last Thursday, Friday, and today, on motion of Mr. Anderson.

Mr. Hill and Mr. Finn for last Thursday, on motion of Mr. Walker.

Mr. Warwick for last Thursday and Friday, on motion of Mr. Nicholson.

Mr. Ferguson for yesterday and today, on motion of Mr. Lilley.

Mr. Davis for last Thursday, Friday, and today, on motion of Mr. Holder.

Mr. Terrell of Val Verde for last Thursday, Friday, and today, on motion of Mr. Ramsey.

Mr. Adkins for Thursday and Friday of this week, on motion of Mr. Albritton.

Mr. Rogers for yesterday, on motion of Mr. Savage.

Mrs. Moore for last Thursday, on motion of Mrs. Strong.

Mr. Reader for last Thursday, on motion of Mr. Anderson.

Mr. Adamson for last Thursday morning, on motion of Mr. Towery.

Mr. Towery for last Thursday, on motion of Mr. Fisher.

Mr. Fisher for last Thursday, on motion of Mr. Scott.

Mr. Greathouse for last Thursday, on motion of Mr. Patterson.

Mr. Ratliff for last Thursday, Friday, and Saturday, on motion of Mr. Ray.

Mr. Farmer for last Thursday, on motion of Mr. Elliott.

Mr. Leonard for last Thursday and Friday, and for next Monday and Tuesday, on motion of Mr. Cunningham.

Mr. Warwick for last Thursday and Friday, on motion of Mrs. Hughes.

Mr. Tarwater for last Thursday and Friday, on motion of Mr. Warwick.

Mr. Hubbard for Thursday, Friday,

and Saturday of this week, on motion of Mr. Johnson of Dimmit.

The following members were granted leaves of absence on account of illness:

Mr. Sullivant for last Thursday, Friday, and Saturday of this week, on motion of Mr. Van Zandt.

Mr. Lee for yesterday, today, and indefinitely, on motion of Mr. Burns of McCulloch.

Mr. Baker for Thursday, Friday, and Saturday of this week, on motion of Mr. Fisher.

#### HOUSE BILLS ON FIRST READING.

The following House bills, introduced today, were laid before the House, read severally first time, and referred to the appropriate committees, as follows:

By Mr. Richardson:

H. B. No. 4, A bill to be entitled "An Act to conserve the fertility of the soils of the State of Texas by limiting the percentage of cultivated lands which may be planted or cultivated in any one field crop during any one year, and requiring the rotation of crops from year to year; providing that more than 50 per cent of such lands may be planted to corn if soy beans, peas, or other legumes are planted therewith; describing the unit of lands for determining the percentage of crop planting; prescribing penalties for violations; etc., and declaring an emergency."

Referred to Committee on Agriculture.

By Mr. Burns of McCulloch, Mr. Johnson of Dallam, and Mr. Albritton:

H. B. No. 5, A bill to be entitled "An Act amending Section 10, of Chapter 282, of the General Laws passed by the Regular Session of the Forty-second Legislature, relative to the licensing of chauffeurs of trucks; and declaring an emergency."

Referred to Committee on Highways and Motor Traffic.

By Mr. Laird:

H. B. No. 6, A bill to be entitled "An Act providing for an open season on squirrels in Angelina and Tyler counties, providing a penalty, and declaring an emergency."

Referred to Committee on Game and Fisheries.

By Mr. McCombs:

H. B. No. 7, A bill to be entitled "An Act amending Article 2226, of the Revised Civil Statutes of Texas, 1925 Revision, providing the cases in which attorney's fees may be recovered by the plaintiff."

Referred to Committee on Judiciary.

By Mr. Farmer, Mr. Rogers, and Mr. Elliott:

H. B. No. 8, A bill to be entitled "An Act amending Article 7046, of the Revised Civil Statutes of the State of Texas, for 1925, providing that a poll tax of one dollar (\$1) only, shall be collected on every person between the ages of 21 and 60 years, making certain exceptions; and declaring that no poll tax shall be levied for general revenue purposes, and that no county shall levy a poll tax, and providing where unorganized counties may pay; and declaring an emergency."

Referred to Committee on Revenue and Taxation.

#### INVITING THE HON. JOHN NANCE GARNER TO ADDRESS THE LEGISLATURE.

The Speaker laid before the House, for consideration at this time, the following resolution:

S. C. R. No. 1, Inviting the Hon. John Nance Garner to address the Legislature.

Whereas, Hon. John Nance Garner, Speaker of the House of Representatives of the Congress of the United States, and Democratic nominee for Vice-President of the American Union, will be in Texas on Monday, November 7, en route to his home in Uvalde, and

Whereas, Mr. Garner, as a Texas Representative in Congress for the past thirty years has rendered notable service to the State and to the Nation, and

Whereas, Texas has been signally honored in having for the first time a native son nominated by the Democratic party of the United States to so high a place of honor and service, and

Whereas, His return to Texas at this time affords loyal Texans an opportunity to do him honor and to warmly welcome him to his native State; now, therefore, be it

Resolved, That the Senate of Texas,

the House of Representatives concurring, invite the Hon. John Nance Garner to address a joint session of the House and Senate at such time on Monday, November 7, as will be convenient to him.

The resolution was read second time, and was adopted.

#### RELATING TO DEMOCRATIC NOMINEES.

Mr. Laird offered the following resolution:

Whereas, The acting President of the United States has likened the present economic crisis and pending general election to the Civil War period; and

Whereas, Accepting the statement of the acting President at its face value, the people of the State of Texas are reminded to look now, as our fathers did in the dark days so graphically described by the acting President, to the Democratic party, taking into consideration the bayonet-enforced Republican rule, one time foisted upon the people of the Lone Star State; and

Whereas, The people of the State of Texas are warned that where bayonets supersede civil authority in the enforcement of legislative enactments, bureaucratic orders or executive fiats, the very foundations of our government are shaken, laws nullified, the constitutional rights ignored; and

Whereas, It is axiomatic that "history repeats itself," which truism should place present-day Texas on guard against their hereditary foe, the Republican party, with its class privilege characteristics and utter disregard for the governmental concepts, championed by great Democratic leaders from Jefferson to Wilson; and

Whereas, A reawakened national spirit of militant Democracy abroad throughout our land, with a determination of restoring the government into the hands of the people, headed by Governor Roosevelt of New York, and that peerless son of Texas, John Nance Garner; and

Whereas, During this struggle of people's rights against encroachment of predatory interests under the protection of the outspread wings of the Republican party, the Democratic party has a right to, and expects every officeholder elected or appointed

as a Democrat to fight for the election of the party nominees as well as the great Democratic principle of majority rule; and

Whereas, Remembering the tragic times of the last bayonet-enforced rule of a Republican Governor in Texas; remembering the words of the President of the United States, uttered yesterday in Springfield, Ill., while standing by the immortal Lincoln's tomb, that we are faced with times comparable to our Civil War period; therefore, be it

Resolved by the House of Representatives of the State of Texas, That we condemn the veiled threat to arouse sectional strife among our people and to return to our State carpet-bag Governors; and to prevent this we respectfully urge the citizens of our beloved State of Texas to vote a straight Democratic ticket on the eighth day of this month, in order that the great principles of Democracy may survive in our State and Nation, and be it further

Resolved, That it is the urgent duty of every official who sought, accepted, or holds office as a Democrat, to continue the fight under the banner of his enlistment, and not desert his party in the midst of a fight or bite the hand that feeds him.

Signed—Laird, Anderson, Barron, Mathis, Grogan, Graves, West of Cameron, Pope, Farmer, Bond, Moore, and Towery.

The resolution was read second time.

Mr. Metcalfe moved that the resolution be referred to the Committee on State Affairs.

Mr. Anderson moved to table the motion to refer the resolution.

Question recurring on the motion to table, yeas and nays were demanded.

The motion to table prevailed by the following vote:

#### Yeas—63.

Adams of Harris.	Elliott.
Adams of Jasper.	Engelhard.
Akin.	Farmer.
Anderson.	Farrar.
Barron.	Finn.
Bounds.	Fisher.
Bradley.	Forbes.
Burns of Walker.	Fuchs.
Coltrin.	Giles.
Cox of Lamar.	Goodman.
Cunningham.	Graves.
Dale.	Greathouse.

Grogan.	Moore.
Hardy.	Murphy.
Harrison	O'Quinn.
of Waller.	Patterson.
Hefley.	Pope.
Herzik.	Ramsey.
Hines.	Ray.
Holland.	Reader.
Holloway.	Richardson.
Hoskins.	Rogers.
Hughes.	Sanders.
Johnson	Scott.
of Dimmit.	Stevenson.
Jones of Shelby.	Terrell
Justiss.	of Cherokee.
Laird.	Towery.
Lilley.	Turner.
Long.	Vaughan.
McCombs.	West of Cameron.
McGregor.	Wiggs.
Moffett.	Young.

#### Nays—39.

Adamson.	Jones of Atascosa.
Adkins.	Johnson
Albritton.	of Dallam.
Alsup.	Lemens.
Bryant.	McDougald.
Burns	McGill.
of McCulloch.	Metcalfe.
Carpenter.	Morse.
Caven.	Nicholson.
Coombes.	Satterwhite.
Cox of Limestone.	Shelton.
Daniel.	Sherrill.
Donnell.	Smith of Wood.
Dowell.	Sparkman.
Ford.	Stephens.
Hanson.	Steward.
Harrison	Tarwater.
of El Paso.	Van Zandt.
Holder.	Walker.
Howsley.	Warwick.
Jackson.	West of Coryell.

#### Absent.

Baker.	Lockhart.
Beck.	Magee.
Bedford.	Martin.
Bond.	Mathis.
Boyd.	Munson.
Brice.	Olsen.
Brooks.	Petsch.
Claunch.	Ratliff.
Dodd.	Rountree.
Dunlap.	Savage.
Dwyer.	Smith of Bastrop.
Hubbard.	Strong.
Kayton.	Wagstaff.
Keller.	Weinert.
Lasseter.	Westbrook.
Leonard.	Wyatt.

#### Absent—Excused.

Davis.	Duvall.
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Ferguson.	Lee.
Grogan.	Mehl.
Harman.	Sullivant.
Hill.	Terrell
Kennedy.	of Val Verde.

Mr. Walker moved the previous question on the resolution, and the main question was ordered.

Question recurring on the resolution, yeas and nays were demanded.

The resolution was adopted by the following vote:

#### Yeas—81.

Adams of Harris.	Johnson
Adams of Jasper.	of Dallam.
Adamson.	Johnson
Akin.	of Dimmit.
Alsup.	Jones of Shelby.
Anderson.	Justiss.
Barron.	Laird.
Bedford.	Lasseter.
Bond.	Lilley.
Bounds.	Long.
Bradley.	McCombs.
Burns of Walker.	McGregor.
Cox of Lamar.	Magee.
Cox of Limestone.	Moffett.
Cunningham.	Moore.
Dale.	Morse.
Daniel.	Murphy.
Donnell.	Nicholson.
Dwyer.	Patterson.
Elliott.	Pope.
Engelhard.	Ramsey.
Farmer.	Reader.
Farrar.	Richardson.
Finn.	Rogers.
Fisher.	Sanders.
Forbes.	Savage.
Fuchs.	Scott.
Giles.	Sherrill.
Goodman.	Sparkman.
Graves.	Stevenson.
Greathouse.	Steward.
Hardy.	Strong.
Harrison	Tarwater.
of El Paso.	Terrell
Harrison	of Cherokee.
of Waller.	Towery.
Hefley.	Turner.
Herzik.	Van Zandt.
Hines.	Vaughan.
Holland.	Walker.
Holloway.	Weinert.
Hoskins.	West of Cameron.
Hughes.	Wiggs.

#### Nays—12.

Adkins.	Jones of Atascosa.
Albritton.	Lemens.
Bryant.	Metcalfe.
Carpenter.	Shelton.
Coltrin.	Stephens.
Holder.	Warwick.

#### Present—Not Voting.

Mr. Speaker.	Hanson.
Burns	Howsley.
of McCulloch.	Satterwhite.
Coombes.	West of Coryell.

#### Absent.

Baker.	McDougald.
Beck.	McGill.
Boyd.	Martin.
Brice.	Mathis.
Brooks.	Munson.
Caven.	Olsen.
Claunch.	O'Quinn.
Dodd.	Petsch.
Dowell.	Ratliff.
Dunlap.	Ray.
Ford.	Rountree.
Hubbard.	Smith of Bastrop.
Jackson.	Smith of Wood.
Kayton.	Wagstaff.
Keller.	Westbrook.
Leonard.	Wyatt.
Lockhart.	Young.

#### Absent—Excused.

Davis.	Kennedy.
Duvall.	Lee.
Ferguson.	Mehl.
Grogan.	Sullivant.
Harman.	Terrell
Hill.	of Val Verde.

Mr. Bond moved to reconsider the vote by which the resolution was adopted, and asked to have the motion to reconsider spread on the Journal.

#### REASONS FOR VOTES.

I vote "no" on the above resolution for the reason that I believe such resolutions should be referred to the party convention and not to the Legislature.

#### JONES of Atascosa.

I vote "no" on this resolution, because I object to turning the Texas Legislature into a political caucus. We are here for a special purpose which we should attend to and go home.

#### BRYANT.

I vote against the resolution, because I consider it not only out of place, but silly and presumptuous, but a reflection on the Democracy of Texas, and will make last-minute campaign material for the Republican candidate for President, and because I have already voted a straight ticket before I left home.

#### SMITH of Wood.

## MESSAGE FROM THE SENATE.

Senate Chamber,  
Austin, Texas, November 5, 1932.

Hon. Fred H. Minor, Speaker of the  
House of Representatives.

Sir: I am directed by the Senate to  
inform the House that the Senate has  
passed H. B. No. 1, Mileage and per  
diem bill.

The Senate has adopted the follow-  
ing:

H. C. R. No. 1, Relating to mileage  
and per diem of members of the Leg-  
islature.

H. C. R. No. 2, Inviting Hon. John  
Nance Garner to address a joint ses-  
sion of the House and Senate.

Respectfully,

BOB BARKER,  
Secretary of the Senate.

BILL AND RESOLUTIONS SIGNED  
BY THE SPEAKER.

The Speaker signed, in the pres-  
ence of the House, after giving due  
notice thereof and their captions had  
been read severally, the following  
enrolled bill and resolutions:

H. B. No. 1, "An Act making an  
appropriation of the sum of fifty  
thousand dollars (\$50,000) or so much  
thereof as may be necessary, out of  
the general revenues, to pay the per  
diem and mileage of members, the  
per diem of officers and employes and  
the contingent expenses of the Fourth  
Called Session of the Forty-second  
Legislature of the State of Texas,  
convened on the third day of Novem-  
ber, 1932, by proclamation of the  
Governor; to supplement the like ap-  
propriation of the Regular Session,  
First, Second, and Third Sessions of  
said Legislature; to pay any unpaid  
vouchers or warrants held by mem-  
bers, officers, or employes of the Reg-  
ular Session, First, Second, and Third  
Called Sessions of said Legislature,  
etc., and declaring an emergency."

H. C. R. No. 1, Relative to per diem  
of members of the Legislature.

H. C. R. No. 2, Inviting the Hon.  
John Nance Garner to address the  
Legislature.

RELATING TO TERMS OF MEM-  
BERS OF THE LEGISLATURE.

Mr. Pope offered the following res-  
olution:

That Section 4, of Article III, of  
the Constitution of the State of

Texas, expressly provides as follows:

"Section 4. The members of the  
House of Representatives shall be  
chosen by the qualified electors, and  
their term of office shall be two years  
from the day of their election."

That Section 30, of Article XVI, of  
the general provisions of the Consti-  
tution of the State of Texas, spe-  
cifically provides as follows:

"Section 30. The duration of all  
offices not fixed by this Constitution  
shall never exceed two years";

By positive and specific designation  
under the Constitution, the date when  
the term of office of a member of the  
Legislature begins is from the date  
of his election, and from the specific  
designation under the Constitution,  
no office shall extend longer than two  
years, unless specifically provided by  
the Constitution. It is, therefore,  
positively clear that the membership  
of the Forty-second Legislature hold  
office for two years from the date  
of election. The election was Novem-  
ber 4, 1930, and at midnight on No-  
vember 4, 1932, under said constitu-  
tional limitations, the membership of  
each member expired.

Article 5422, as now appears in Ver-  
non's Statutes, reads as follows:

"Art. 5422. The Fortieth Legisla-  
ture shall assemble to hold its bi-  
ennial session on the second Tuesday  
in January, A. D., 1927, at 12 o'clock  
m., and shall meet biennially there-  
after on the same day and hour until  
otherwise provided by law."

Article 5423, of said statute, pro-  
vides as follows:

"Art. 5423. Those persons receiv-  
ing certificates of election to the Sen-  
ate, and House of Representatives of  
the Legislature, and those Senators  
whose terms of office shall not have  
terminated, and none others, shall be  
competent to organize the Senate and  
House of Representatives."

If said Article 5422 has any legal  
effect, it applies only to the Fortieth  
Legislature, but Article 5423 express-  
ly provides that those persons receiv-  
ing certificates of election, and none  
others, shall be competent to organ-  
ize the Senate and the House. It  
clearly follows, therefore, that under  
said constitutional provision, Section  
4, Article III, that the term of the of-  
fice for members of the Legislature  
next hereafter begins at midnight on  
November 8, 1932, and those who shall  
receive certificates of election shall  
be those only, who can, under Article

5423 of the statute, organize the House. Since no date is fixed under the statute for the convening of the Forty-third Legislature, because Article 5422 does not provide for the meeting of any Legislature except the Fortieth Legislature, it must follow, therefore, that those holding certificates after the election on next Tuesday, the 8th instant, will compose the membership of the Forty-third Legislature.

Section 17, of Article XVI, of the Constitution, provides as follows:

"Section 17. All officers within this State shall continue to perform the duties of their offices until their successors shall have been duly qualified."

This provision of the Constitution does not prevent those holding certificates under the election of next Tuesday from tendering their certificates and qualifying as members of the Legislature. Since all of the membership must be re-elected on next Tuesday, an entirely new House of Representatives will present certificates, and, therefore, the present membership will necessarily be required to retire.

In order that proper consideration may be given to said statutes and constitutional provisions with reference to a duly constituted Legislature, be it

Resolved by the House of Representatives as today acting, That a committee of five be appointed by the Speaker of the House to make investigation of said statutes and constitutional provisions and make written report of the findings of said committee back to this body at 10 o'clock a. m., November 10, 1932.

The resolution was read second time.

Mr. Patterson raised a point of order on further consideration of the resolution at this time, on the ground that the time for the consideration of resolutions has expired.

(Pending consideration of the point of order, Mr. McGill occupied the chair temporarily.)

(Mr. Minor in the chair.)

#### OPINION OF ATTORNEY GENERAL IN REGARD TO TERMS OF THE MEMBERS OF THE LEGISLATURE.

On motion of Mr. Farmer, the following opinion was ordered printed in the Journal:

No. 1298.

#### LEGISLATURE — MEMBERS OF— CONSTITUTIONAL LAW.

Construing: Constitution, Article III, Sections 4, 5, and 9; Article IV, Section 4; Section 1, of Article XVI; Section 17. Revised Statutes, Articles 5505 to 5516.

1. The terms of office of the members of the Thirty-third Legislature expire on the third day of November, A. D., 1914.

2. But they shall continue to perform the duties of their office until their successors shall be duly qualified.

3. Their successors, that is, the members of the Thirty-fourth Legislature, can not qualify, except in the manner and at the time provided by Chapters 1 and 2, of Title 82, of the Revised Statutes, which time will be on the second Tuesday in January, A. D., 1915, by taking the oath of office administered by the Clerk of the House when the Legislature assembles.

October 20, 1914.

Hon. O. B. Colquitt, Governor, Capitol.

Dear Sir: In your inquiry you request the opinion of the Attorney General as to whether a special session of the Legislature, called to assemble after the third day of November, A. D. 1914, and prior to the second Tuesday in January, A. D. 1915, would be composed of the present membership of the Thirty-third Legislature or those elected to the Legislature on November 3 of this year.

#### I.

This inquiry involves the construction of various constitutional and statutory provisions. Section 4 of Article III, of the Constitution, reads as follows:

"The members of the House of Representatives shall be chosen by the qualified electors, and their term of office shall be two years from the day of their election."

It is clear from this section that the terms of office of the present membership of the Thirty-third Legislature will expire on November 3 next; but the provision of the Constitution just above quoted must be

construed in connection with another, to-wit: Section 17, of Article XVI, which reads:

"All officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified."

Provisions of the Constitution relating to the same subject must be construed together.

G. H. & S. A. Ry. Co. vs. the State, 77 Texas 379.

State vs. Moore, 57 Texas 313.

Construing these two provisions of the Constitution together, they mean that the term of office of a member of the Legislature shall be two years, beginning with the day of his election, but that, nevertheless, after the expiration of the term thus fixed by the Constitution, he shall continue to perform the duties of his office until his successor shall have been duly qualified.

23 Am.-Eng. Ency. of Law, page 314.

Jones vs. City of Jefferson, 66 Texas 576.

Badger vs. United States, 93 U. S., 602.

Salamanca Township vs. Wilson, 109 U. S., 627.

And this is so even where the commencement of such successor's term and consequently his right to qualify have, by law, been put off by a date later than the end of the incumbent's regular term. (23 Am. and Eng. Ency. of Law, pp. 413-414, citing State vs. Tilletts, 4 Ohio Circuit Decisions, page 509.)

The Constitution of the State does not direct when members of the Legislature shall qualify, nor in what manner, except they are required to take the oath of office prescribed by that instrument, which must be done before they enter upon their duties. (State Constitution, Section 1, Article XVI.)

The Constitution provides that "the Legislature shall meet every two years, at such times as may be provided by law and at other times when convened by the Governor." (Section 5, Article III.)

Section 9 of the same article provides: "The House of Representatives shall, when it first assembles, organize temporarily and thereupon proceed to the election of a Speaker from its own members." Section 4, Article IV, provides that "the Governor shall be installed on the first Tues-

day after the organization of the Legislature, or as soon thereafter as practical, and shall hold his office for a term of two years, or until his successor shall be duly installed."

## II.

In response to these various provisions of the Constitution, the Legislature has enacted certain articles of the civil code which are, in effect, enabling acts to put into practical operation the provisions of the Constitution just referred to.

Chapter 1, of Title 82, Article 5505, Revised Statutes, is as follows:

"The Thirty-third Legislature shall assemble to hold its biennial session on the second Tuesday in January, A. D. 1912 (1913), at 12 o'clock m., and shall meet biennially thereafter on the same day and hour until otherwise provided by law."

The language of this codification is somewhat confusing, but by reference to the Code of 1895, as well as that of 1879, it is very clear that what was intended was that the Thirty-third Legislature should meet on the second Tuesday in January, A. D. 1913, and that the Legislature should meet biennially thereafter on the same day and hour until otherwise provided by law. It is well settled, of course, that we are to rely upon the law as enacted rather than as compiled by the codifiers.

Robertson vs. The State, 159 S. W. 722.

When we do this and consult the code of 1895 and of 1879, it is plain that the meaning which we have given the above and latest codification is the correct one. Chapter 2, of Title 82, Revised Statutes of 1911, pertains to the organization of the Legislature and was enacted in response evidently to the several provisions of the Constitution to which we have heretofore referred. This chapter, article by article, reads as follows, to-wit:

"Article 5506. Those persons receiving certificates of election to the Senate and House of Representatives of the Legislature, and those Senators whose terms of office shall not have terminated, and none others, shall be competent to organize the Senate and House of Representatives.

"Article 5507. For the purpose of organization, as provided for in the



preceding article, it shall be the duty of the Secretary of State to preside at each recurring session of the Legislature.

"Article 5508. He shall attend at the time and place designated for the meeting of the Legislature, and shall appoint a clerk, who shall have been Chief Clerk of the House the preceding session, if he be present, to take a minute of the proceedings.

"Article 5509. The Clerk, under direction of the Secretary of State, shall call all the counties in alphabetical order.

"Article 5510. When the counties are called and the members-elect appear and present their credentials, it shall be the duty of the Clerk, under the order and direction of the Secretary of State, to administer to each the oath prescribed by the Constitution.

"Article 5511. Should returns of election in any county for members of the Legislature not be made to the office of the Secretary of State, the Clerk shall nevertheless call such county.

"Article 5512. Any person appearing at said call and presenting the proper evidence of his election shall be admitted or qualified in the same manner as though the return of his election had been made to the office of the Secretary of State.

"Article 5513. Should there not be a quorum in attendance on the day appointed for the meeting of the Legislature, it shall be the duty of the Secretary of State and Clerk to attend from day to day until a quorum shall appear and be qualified as above.

"Article 5514. When a quorum shall have appeared and qualified, the House shall proceed to the election of a Speaker, unless a majority of the members present shall think proper to defer said election.

"Article 5515. When an election for Speaker shall have been had, the Speaker-elect shall immediately take the chair and the House proceed to its further organization by electing the necessary officers, to whom the Speaker shall administer the oath of office.

"Article 5516. Should there be no Secretary of State, or in case he be absent or unable to attend from any cause, the Attorney General shall attend and perform the duties prescribed in this title."

These articles of the Civil Code

were enacted in August, 1876, after the adoption of the Constitution by the people in February of that year and may be regarded as a legislative interpretation of the constitutional provisions referred to; and, as such, by a coincidence in point of time with the adoption of the Constitution and acquiesced in and acted upon for a period of more than thirty-eight years, will be sustained by the courts as within the authority and power of the Legislature as limited by the Constitution. Cooley on Constitutional Construction, page 81; Black on Interpretation of Laws, Section 20. Mr. Black says:

"The contemporary construction of the Constitution, especially if universally adopted, and also its practical construction, especially if acquiesced in for a long period of time, are valuable aids in determining its meaning and intention in cases of doubt."

Says Judge Cooley:

"Where there has been a practical construction, which has been acquiesced in for a considerable period, consideration in favor of adhering to this construction sometimes present themselves to the courts with a plausibility and force which it is not easy to resist. Indeed, where a particular construction has been generally accepted as correct, and especially when this has occurred contemporaneously with the adoption of the Constitution, and by those who had opportunity to understand the intention of the instrument, it is not to be denied that a strong presumption exists that the construction rightly interprets the intention." (Cooley on Constitutional Limitations, p. 82.)

### III.

Taking, therefore, Chapters 1 and 2, of Title 82, as constitutional acts of the Legislature, the question at issue is easy of solution. Members of the Legislature, under this law, may only take the oath of office and organize the Legislature in the manner and at the time prescribed by the statute.

Clearly, the Legislature had the right to prescribe this, because it was not prohibited from so doing by the Constitution and, being a matter of legislation not interdicted by the fundamental law, the Legislature could constitutionally govern the time, manner, and method of taking the oath of office and organizing the Legis-

lature. The general rule is that State legislation is valid unless prohibited by the State or Federal Constitutions; and, except in the particulars wherein it is restrained by the Constitution of the United States, the Legislative Department may exercise all legislative power which is not forbidden expressly or by implication by the provisions of the Constitution of this State.

Brown vs. City of Galveston, 97 Texas 9.

Lytle vs. Halff Bros., 75 Texas 132.

Cooley's Constitutional Limitations, sixth ed. 204.

From what we have said, it follows:

(a) The terms of office of the members of the Thirty-third Legislature expire on the third day of November, A. D. 1914.

(b) But they "shall continue to perform the duties of their office until their successors shall be duly qualified."

(c) Their successor can not be duly qualified except in the manner and at the time provided in Chapters 1 and 2, of Title 82, Revised Statutes, which provide for the meeting of the Legislature and the administration of the oath of office of its members in assembly on the second Tuesday in January, which, in the instance particularly in view, is the second Tuesday in January, A. D. 1915.

#### IV.

You are therefore advised that should you call another special session of the Legislature between November 3, A. D. 1914, and the second Tuesday in January, A. D. 1915, that such session will be composed of those members of the Legislature now serving as members of the Thirty-third Legislature and not of those who will be elected to the Legislature on November 3, next.

Whatever may be thought of the wisdom, or as an original proposition of the constitutionality, of the legislative act referred to, prescribing the time and manner of qualifying members of the Legislature, the law has been in effect too long and was enacted too near the time of the adoption of the Constitution for this department or the courts to criticize either the one or question the constitutionality of the other.

In giving you this advice we have but applied to the facts suggested by

you the plain letter of the statute, which has been in force in this State unquestioned and unchallenged, a constant guide and precedent, for more than a third of a century.

Respectfully submitted,

C. M. CURETON,  
First Assistant Attorney General.

#### ADJOURNMENT.

Mr. Sanders moved that the House adjourn until 10 o'clock a. m., next Monday.

Mr. Walker moved that the House adjourn until 9 o'clock a. m., next Wednesday.

The motion of Mr. Sanders prevailed, and the House accordingly, at 12:15 o'clock p. m., adjourned until 10 o'clock a. m., next Monday.

#### APPENDIX.

#### REPORT OF THE COMMITTEE ON ENGROSSED BILLS.

Committee Room,  
Austin, Texas, November 5, 1932.

Hon. Fred H. Minor, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills, to whom was referred

H. B. No. 1, A bill to be entitled "An Act making an appropriation of the sum of fifty thousand dollars (\$50,000), or so much thereof as may be necessary, out of the General Revenues, to pay the per diem and mileage of members, the per diem of officers and employes, and the contingent expenses of the Fourth Called Session of the Forty-second Legislature of the State of Texas, convened on the third day of November, 1932, by proclamation of the Governor, and declaring an emergency,"

Have carefully compared same and find it correctly engrossed.

SAVAGE, Acting Chairman.

#### REPORT OF THE COMMITTEE ON ENROLLED BILLS.

Committee Room,  
Austin, Texas, November 5, 1932.

Hon. Fred H. Minor, Speaker of the House of Representatives.

Sir: Your Committee on Enrolled Bills, to whom was referred

H. B. No. 1, "An Act making an

appropriation of the sum of fifty thousand dollars (\$50,000), or so much thereof as may be necessary, out of the General Revenues, to pay the per diem and mileage of members, the per diem of officers and employes and the contingent expenses of the Fourth Called Session of the Forty-second Legislature of the State of Texas, convened on the third day of November, 1932, by proclamation of the Governor; to supplement the like appropriation of the Regular Session, First, Second and Third Sessions of said Legislature; to pay any unpaid vouchers or warrants held by members, officers, or employes of the Regular Session, First, Second and Third Called Sessions of said Legislature; to pay any unpaid claims and accounts of members, officers, or employes of said sessions or of other persons, authorized either by the Senate or the House of Representatives; to pay any and all sums for whatever purpose authorized to be expended by concurrent resolution of the Forty-second Legislature at its Regular Session, First, Second, and Third Called Sessions; to pay the per diem of members, officers, or employes for pre-session and post-session work of the Fourth Called Session of said Forty-second Legislature; providing how accounts may be approved and audited, and declaring an emergency,"

Have carefully compared same and find it correctly enrolled.

COX of Lamar, Chairman.

Committee Room,

Austin, Texas, November 5, 1932.

Hon. Fred H. Minor, Speaker of the House of Representatives.

Sir: Your Committee on Enrolled Bills, to whom was referred

H. C. R. No. 1, Relative to per diem of members of the Legislature,

Have carefully compared same and find it correctly enrolled.

COX of Lamar, Chairman.

Committee Room,

Austin, Texas, November 5, 1932.

Hon. Fred H. Minor, Speaker of the House of Representatives.

Sir: Your Committee on Enrolled Bills, to whom was referred

H. C. R. No. 2, Inviting the Hon. Jno. Nance Garner to address the Legislature,

Have carefully compared same and find it correctly enrolled.

COX of Lamar, Chairman.

#### FOURTH DAY.

(Monday, November 7, 1932.)

The House met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Speaker Minor.

The roll was called, and the following members were present:

Mr. Speaker.	Jones of Shelby.
Adams of Jasper.	Jones of Atascosa.
Adamson.	Justiss.
Adkins.	Kayton.
Akin.	Keller.
Alsup.	Kennedy.
Anderson.	Laird.
Baker.	Lasseter.
Barron.	Lee.
Bedford.	Lemens.
Bounds.	Lilley.
Boyd.	Lockhart.
Bradley.	Long.
Brice.	McCombs.
Brooks.	McDougald.
Bryant.	McGill.
Burns of Walker.	McGregor.
Burns	Magee.
of McCulloch.	Mehl.
Carpenter.	Metcalfe.
Coltrin.	Moffett.
Cox of Lamar.	Moore.
Cox of Limestone.	Morse.
Dale.	Munson.
Daniel.	Nicholson.
Davis.	Olsen.
Dodd.	O'Quinn.
Donnell.	Petsch.
Dowell.	Ramsey.
Dunlap.	Ratliff.
Duvall.	Reader.
Elliott.	Richardson.
Farmer.	Rogers.
Farrar.	Rountree.
Ferguson.	Sanders.
Finn.	Scott.
Fisher.	Shelton.
Forbes.	Sherrill.
Ford.	Smith of Wood.
Goodman.	Sparkman.
Hanson.	Stephens.
Hardy.	Stevenson.
Harrison	Steward.
of El Paso.	Strong.
Herzik.	Terrell
Hill.	of Cherokee.
Hines.	Towery.
Holder.	Turner.
Holland.	Van Zandt.
Holloway.	Vaughan.
Howsley.	Wagstaff.
Hubbard.	Walker.
Hughes.	Warwick.
Jackson.	West of Coryell.
Johnson	West of Cameron.
of Dallam.	Wiggs.
Johnson	Wyatt.
of Dimmit.	Young.